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In the Supreme Court of the United States

October Term 1941

No. 205

A. CRAWFORD GREENE, Guardian of the Estate of Alice H. Lester, an incompetent person,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit
and
Brief in Support Thereof

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June 21, 1941.

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In the Supreme Court of the United States

October Term 1941

No. .....

A. Crawford Greene, Guardian of the Estate of Alice H. Lester, an incompetent person,

Petitioner,

vs.

Commissioner of Internal Revenue,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

To the Honorable, the Supreme Court of the United States:

Your petitioner, A. Crawford Greene, Guardian of the Estate of Alice H. Lester, an incompetent person, respectfully prays that a writ of certiorari issue to review the judgment (R. Vol. I, 123) of the United States Circuit Court of Appeals for the Ninth Circuit entered on April

21, 1941, in a cause numbered and entitled on its docket #9619, *Commissioner of Internal Revenue, Petitioner, vs. A. Crawford Greene, Guardian of the Estate of Alice H. Lester, an incompetent person, Respondent,* reversing decisions of the United States Board of Tax Appeals. Petition for rehearing was denied May 23, 1941.

SUMMARY STATEMENT OF THE MATTER INVOLVED

The matter involved is the federal gift tax liability of Alice H. Lester, an incompetent person, for the calendar years 1936 and 1937. The material facts appear without controversy. They are set forth in an Agreed Statement of Facts (R. Vol. I, 52-63). For more than thirty years the matter of the estate of said incompetent has been pending in the Superior Court of the State of California in and for the County of El Dorado. From time to time that court on applications by the incompetent's husband and two daughters, after hearings duly and regularly noticed and held, made allowances from the estate for their maintenance and support. For a considerable time prior to his death in 1933 the incompetent's husband was bedridden and dependent on his wife's estate for support. The incompetent's daughters have always been dependent on their mother's estate for support. The applications to and orders of the California court are set forth as Exhibit 1 to the Agreed Statement of Facts and form Volume II of the Record. By 1936 the accumulated total of these allowances paid since the effective date of the Gift Tax Act (June 6, 1932) exceeded the allowable credits and exemptions under that Act. Respondent Commissioner as-

sessed a gift tax deficiency for 1936 and another for 1937 (R. Vol. I, 19, 42). The proceedings for these two years were consolidated for hearing. Only payments for support and maintenance are involved. Extra allowances from surplus income of the incompetent's estate, first made in 1937 under a California statute passed in 1935, were held to be taxable gifts by the Board of Tax Appeals and petitioner did not appeal from that holding (R. Vol. I, 56, 57, 81-83).

Petitioner has contended that the support and maintenance allowances made by the California court were compelled by California statutes and were obligatory on the incompetent's estate. The Board of Tax Appeals so held, and concluded that the payments of the allowances were not gifts (R. Vol. I, 64, 80, 81; 41 B. T. A. 515, 522). One judge of the Circuit Court of Appeals for the Ninth Circuit agreed with the Board, but two judges of that court reversed the Board, saying that "it is immaterial what local statutes said, or local courts held" (R. Vol. I, 112, 120); and holding in effect that payments made in discharge of an obligation imposed by state law are taxable gifts. Apparently five judges of the same court would disagree with this failure to apply local law (infra, pp. 9-11, 22-25).

Petitioner has also contended that the final judgments of the California court enforcing an obligation of support against the incompetent's estate were binding in this tax proceeding under the principles of *Freuler v. Helvering*, 291 U. S. 35; *Blair v. Commissioner*, 300 U. S. 5, and other cases. These decisions were dismissed in the majority opinion of the Circuit Court of Appeals for the Ninth Circuit with the comment that "None of such cases in-

volve the gift tax act, and are, therefore, not in point" (R. Vol. I, 120).

Said Circuit Court of Appeals relied upon the recent decision of this court in *U. S. v. Pelzer,* .... U. S. ....., 85 L. Ed. (Adv. Ops.) 625, for its conclusion that the payments involved are gifts whether obligatory under state law or not. Petitioner asserts that the *Pelzer* case has been misapplied (infra, pp. 8-9, 20-21).

OPINIONS BELOW

The findings of fact, opinion and decisions of the Board of Tax Appeals are reported at 41 B. T. A. 515, 516, 522, and appear in the Record (R. Vol. I, 64, 78, 86, 87). The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported at 119 F. (2d) 383, and appears in the Record (R. Vol. I, 112).

STATEMENT OF BASIS OF JURISDICTION

1. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 28 U. S. C. A., Section 347.

2. The judgment of the Circuit Court of Appeals for the Ninth Circuit sought to be reviewed was entered on April 21, 1941 (R. Vol. I, 123, 124). Petition for rehearing was seasonably filed and was denied May 23, 1941 (R. Vol. I, 124).

STATUTES INVOLVED

The case involves the provisions of the Revenue Act of 1932 commonly known as the Gift Tax Act (47 Stat. 245; 26 U. S. C., 1934 Ed., Sections 550, et seq.). California statutes relied on by petitioner and referred to in the opinions of the Board of Tax Appeals and the Circuit Court of Appeals are California Civil Code, Section 206; California Probate Code, Section 1502; and California Probate Code, Section 1558. Pertinent provisions of these statutes are reproduced in the Appendix.

QUESTIONS PRESENTED

Whether the Circuit Court of Appeals for the Ninth Circuit erred:

1. In holding that payments made in discharge of an obligation of support and maintenance imposed by state statutes are taxable gifts.

2. In holding that the question whether state law created and state courts had enforced an obligation against the incompetent's estate to make the payments involved is "immaterial" in these tax proceedings.

3. In holding that because *Freuler v. Helvering*, 291 U. S. 35, and *Blair v. Commissioner*, 300 U. S. 5, involved the Income Tax Act and not the Gift Tax Act, the rule of those cases is not applicable to the Gift Tax Act.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The court below has decided two important questions of federal law which have not been, but should be, settled by this Court, in holding

(a) That payments made in discharge of an obligation of support and maintenance imposed by state statutes are taxable as gifts.

(b) That the principles of *Freuler v. Helvering*, 291 U. S. 35, *Blair v. Commissioner*, 300 U. S. 5, and similar cases do not apply to the Gift Tax Act because those cases did not involve the Gift Tax Act.

2. The decision below is in conflict with applicable decisions of this Court.

(a) In *Uterhart v. United States*, 240 U. S. 598 (succession tax), *Poe v. Seaborn*, 282 U. S. 101 (income tax), *Freuler v. Helvering*, 291 U. S. 35 (income tax), *Blair v. Commissioner*, 300 U. S. 5 (income tax), and *Lang v. Commissioner*, 304 U. S. 264 (estate tax), this Court held that the operation of federal tax laws may be dependent on state law. The majority of the court below in the present case referred to the *Blair* and *Freuler* cases, among others, and said (R. Vol. I, 120):

> "None of such cases involve the gift tax act, and are, therefore, not in point."

The rule of the cases cited is not peculiar to the federal revenue laws there involved. Those cases stand for the general principle that federal tax laws operate on rights and obligations created by state law and that the orders

of state courts in matters of the kind here involved are to be accepted as final. That principle has been applied indiscriminately in both income and estate tax cases and is no less applicable to gift taxes. The principle relates to the appropriate exercise of federal jurisdiction (*Blair v. Commissioner*, 300 U. S. 5, 10) and not to the interpretation of any particular statute. Under that rule the final judgments of the California probate court enforcing and measuring the obligation of support and maintenance should have been accepted in this case. In refusing to recognize the proceedings of the local court, the court below has failed to follow the aforementioned decisions of this Court. It has also ignored the express admonition of this Court in *Lang v. Commissioner*, 304 U. S. 264 at 267 (infra, p. 10).

(b) The accuracy of petitioner's assertion that the existence of an obligation of support must be determined with reference to state law is also demonstrated by the so-called support and alimony trust cases.[1] In those cases this Court held that the income from a trust for the support of wife or children is taxable to the trustor unless under state law creation of the trust completely discharged the trustor from any continuing obligation. The question whether an obligation of support continued after creation of the trust was in each instance determined by reference to state law.

Additionally it has been suggested that it follows from the reasoning of *Douglas v. Willcuts*, 296 U. S. 1, "that

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[1] *Douglas v. Willcuts*, 296 U. S. 1; *Helvering v. Stokes*, 296 U. S. 551; *Helvering v. Schweitzer*, 296 U. S. 551; *Helvering v. Fuller*, 310 U. S. 69; and *Helvering v. Leonard*, 310 U. S. 80.

to the extent that property or income is to be used to discharge the settlor's pecuniary obligations, he has made no taxable gift."

Montgomery and Magill, "Federal Taxes on Estates, Trusts and Gifts" 1936-37, pp. 355, 356.

In holding that the existence of an obligation under local law is not material because in any event the payments here involved are taxable gifts, the decision of the court below is at variance with the implications and reasoning of the support and alimony trust cases.

3. The decision of the court below is a misapplication of the decision of this Court in *U. S. v. Pelzer,* ..... U. S. ....., 85 L. Ed. (Adv. Ops.) 625.

The majority opinion of the court below relies on the decision of this Court in *U. S. v. Pelzer,* ..... U. S. ....., 85 L. Ed. (Adv. Ops.) 625, which was decided after this case was argued and submitted, and concludes therefrom that "it is immaterial what local statutes said, or local courts held" (R. Vol. I, 120). In the *Pelzer* case the question was whether the term "future interests", as used by Congress in the Gift Tax Act (Section 504 (b) of the Revenue Act of 1932), should be defined by the law of the state where the gift in trust was made. This Court decided that the exclusion of gifts of "future interests" from the exemption benefits given by said Section 504 (b) carried no implication that the definition of "future interests" should depend on local law. The court below erroneously concluded that such decision was controlling authority in this case.

Although the decision in the *Pelzer* case may well be authority for the determination of the court below in the present case that the term "consideration" as used in Section 503 of the same act is not to be defined by state law, it is clearly not authority for the conclusion that payments for support of relatives are without "consideration" and therefore gifts (whether obligatory under local law or not), or for the conclusion that it is here "immaterial" whether local statutes created an obligation which a local court enforced. The existence of an obligation of support must depend upon local law. Thus the court below has misapplied the *Pelzer* case to the facts herein and has used that case to reach a result which disregards the rule of *Freuler v. Helvering*, 291 U. S. 35; *Blair v. Commissioner*, 300 U. S. 5; and *Lang v. Commissioner*, 304 U. S. 264, and which is at variance with the implications and reasoning of the support and alimony trust cases.

4. The decision of the court below, rendered by two judges, is in conflict with decisions rendered by the other five judges of the same court.

On the question whether state law applies in federal tax matters, the judges of the Circuit Court of Appeals for the Ninth Circuit are in disagreement. Judges Haney and Garrecht decided the present case in which the essential question is whether payments made under court order for support and maintenance of an incompetent's husband and daughters are gifts. Until their decision it was supposed that if the orders for the payments enforced an obligation of support imposed by California law, the payments were not gifts. But they have now held that "it is

immaterial what local statutes said, or local courts held." Judge Stephens dissented (R. Vol. I, 121). Judges Haney and Garrecht also decided *Bank of America v. Commissioner,* 90 F. (2d) 981, an estate tax case in which the taxpayer contended that California community property law was controlling, and held that "whatever the local law may be, we believe it to be immaterial" (90 F. (2d) 981, 983). Judge Wilbur dissented in the *Bank of America* case (90 F. (2d) 983). In *Lang's Estate v. Commissioner,* 97 F. (2d) 867, likewise an estate tax case in which the taxpayer relied on the Washington community property law, Judges Denman, Mathews and Healy disagreed with the decision in *Bank of America v. Commissioner,* and certified the case of *Lang's Estate* to this Court because they were "faced with the situation where the decision of two judges of the circuit made a precedent for the remaining five" (97 F. (2d) 867, 869). Answering that certificate, in *Lang v. Commissioner,* 304 U. S. 264, this Court expressly repudiated the statement in the *Bank of America* case, as follows:

> "The court [below] was perplexed by *Bank of America v. Commissioner of Internal Revenue,* 90 F. 2d 981, 983, which affirmed that the operation of that Act is not dependent upon local law and 'therefore whatever the local law may be we believe it to be immaterial.' This statement is not accurate and conflicts with what we have said. *Poe v. Seaborn,* 282 U. S. 101, 111, 112; *Blair v. Commissioner,* 300 U. S. 5, 9, 10." (304 U. S. at 267.)

In the present case, decided April 21, 1941, the two judges who concurred in the decision failed to observe the

admonition of this Court quoted above, and have again said that local law is "immaterial", although ten days earlier Judges Denman, Mathews and Stephens, in *Ingraham v. Commissioner,* 119 F. (2d) 223 (C. C. A. 9th Cir., April 11, 1941), applied Connecticut law to determine the existence of an obligation to support a taxpayer's wife and children.

It thus appears that two judges of the Circuit Court of Appeals for the Ninth Circuit are in disagreement with the other five judges of that court on an important question of federal law, and that whether state law is applied in federal tax cases in that court depends upon which particular combination of circuit judges happens to consider the case.

In a similar situation the supervisory jurisdiction of this Court was exercised by writ of certiorari.

> *John Hancock Mutual Life Ins. Co. v. Bartels,* 308 U. S. 180, 181.

See:

> *Robertson and Kirkham, "Jurisdiction of the Supreme Court of the United States,"* 1936, Section 306, pp. 619, 620.

WHEREFORE, petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of all the proceedings in the case num-

bered and entitled on its docket #9619, *Commissioner of Internal Revenue, Petitioner, vs. A. Crawford Greene, Guardian of the Estate of Alice H. Lester, an incompetent person, Respondent,* and that the said judgment of the Circuit Court of Appeals for the Ninth Circuit be reversed, and that your petitioner have such other and further relief in the premises as to this Court may seem proper.

J. M. MANNON, JR.,
Attorney for Petitioner.

JOHN W. PARKER,
MORRIS M. DOYLE,
Of Counsel.

Dated: San Francisco, California, June 21, 1941.